

PUBLIC VERSION

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of

DETERMINATION OF RATES AND TERMS
FOR PREEXISTING SUBSCRIPTION AND
SATELLITE DIGITAL AUDIO RADIO
SERVICES

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) Docket No. 2011-1
) CRB PSS/Satellite II
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WRITTEN DIRECT STATEMENT OF SIRIUS XM RADIO INC.

VOLUME 1 of 7

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November 29, 2011

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Introductory Memorandum
to Written Direct Statement
of Sirius XM Radio Inc.

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INTRODUCTORY MEMORANDUM TO THE
WRITTEN DIRECT STATEMENT OF
SIRIUS XM RADIO INC.

Sirius XM Radio Inc. ("Sirius XM" or "the Company") hereby submits its written direct statement, pursuant to 37 C.F.R. § 351.4. Sirius XM is a preexisting satellite digital audio radio service ("SDARS") as defined in 17 U.S.C. § 114(j)(10).

ROYALTY RATE REQUEST FOR 2013-2017 LICENSE PERIOD

Sirius XM requests that the Copyright Royalty Judges set the SDARS monthly royalty rate for the public performance of sound recordings pursuant to 17 U.S.C. § 114(d)(2), and the making of any number of ephemeral phonorecords to facilitate such performances pursuant to 17 U.S.C. § 112(e), in the range of 5% to 7% of Sirius XM's monthly U.S. Gross Revenues as currently defined in 37 C.F.R. § 382.11. The fee for ephemeral phonorecords shall be included within, and constitute 5% of, such royalty payments. Sirius XM proposes that, other than the royalty rate, the terms currently applicable to SDARS, as codified at 37 C.F.R. § 382.10-17, be retained in their current form.

SUMMARY OF TESTIMONY

In 2007, the Copyright Royalty Judges set the statutory royalty rate for Sirius Satellite Radio Inc. ("Sirius") and XM Satellite Radio Holdings, Inc. ("XM") at a rate beginning at 6% in

2007 and increasing to 8% by 2012 (herein "*Satellite I*" proceeding). This royalty rate tripled the preexisting Sirius and XM royalty obligations to SoundExchange and its members that had been reached by private agreement. The *Satellite I* rate was determined based on a combination of benchmarking from the rates then being paid for similar, but non-identical, rights by quite distinct audio and video entertainment services and application of the statutory § 801(b)(1) factors (17 U.S.C. § 801(b)(1)) governing SDARS rate-setting.

In July 2008, shortly after the *Satellite I* proceeding closed, Sirius and XM merged and the resultant corporation changed its name to Sirius XM. The period following the merger has featured the near-collapse of the newly combined Company as a result of the catastrophic events of 2008-2009; a painstaking rebuilding effort, marked by aggressive cost-cutting and continued strategic investments in programming and supporting technology designed to distinguish the Company from the competition; and a rapidly evolving technological and competitive landscape that increasingly erodes the unique selling attributes of satellite radio – seamless nationwide reception of diverse music and non-music audio programming in one's vehicle. While the Company recently experienced its first year of positive net income, it is still digging out from 20 years of losses amounting to billions of dollars in negative free cash flow and EBITDA. And while the Company is optimistic about its short-term prospects, the persistently depressed global economy, the Company's intimate ties to the automobile industry, and the emergence of viable Internet-based competitors like Pandora that operate free of the costly infrastructure on which the Company relies combine to create a precarious environment and uncertain longer-term prospects for the Company's success over the 2013-2017 license term.

The Company will present testimony from its senior executives as well as distinguished experts in the fields of economics, finance, and digital content technology that will bring the

Judges current as to the Company's finances, operations, and strategic vision, as well as the broader economic, technology, and competitive climate in which it operates. That portrait (wholly apart from the evidence the Company will present as to competitive market valuation of the rights in issue) counsels extreme caution in moving the current royalty rate structure above its 2012 level of 8%. As this testimony will elucidate, since the record on which the current royalty structure is founded was developed in the prior proceeding:

- The Company's subscriber growth, revenues, and free cash flows all have been substantially below forecasted levels.
- Total new car sales (to which Sirius XM's fortunes are directly tied) have plummeted beginning in late 2008 and auto sales for the four years from 2009 through 2012 will be at their lowest level since the period 1980 to 1983.
- Installations of satellite radios in cars dropped by two-thirds as of January 2009 from their 2007 peak.
- The Company narrowly averted bankruptcy and paid dearly to the one rescuer to come forward, with severely dilutive consequences to existing equity holders.
- The Company carries loans of nearly \$2.4 billion coming due between 2013 and 2015, has an accumulated negative free cash flow of \$5.5 billion, an accumulated EBITDA of negative \$3.7 billion, and accumulated net operating losses of \$8 billion.
- Since January 2007 alone, the Company has experienced cumulative cash-flow losses of \$437 million.
- Sirius XM's stock price fell from \$4 a share in January 2007 to just over \$.05 a share in February 2009, and still has not remotely recovered – trading today at around \$1.75 per share.

At the same time, the Company will have paid SoundExchange approximately [REDACTED] in music royalties over the 2007–2012 period – representing a disproportionately large percentage of the Company's earnings over the last license term. Over the current license term, as the Company's revenues have grown, so too have SoundExchange's revenue-based royalties. If the Company meets its 2012 budgeted revenue, fees payable to SoundExchange will reach

some [REDACTED], representing a doubling of 2007 fees of some [REDACTED], and a 28% increase over 2010 fees of some [REDACTED].

A “reasonable” fee for the upcoming license period must take account of the policy factors found in § 801(b)(1) of the Copyright Act. Among these is to enable Sirius XM to earn a fair return on its investment – something that has not happened to date and that, as Professor Stowell’s testimony demonstrates, would only be further frustrated were SoundExchange awarded an increase in the prevailing royalty rate. As it is, a high percentage of Sirius XM’s earnings are consumed by such royalty payments; there is no sound reason to increase the reward earned by the record industry at the further expense of reasonable returns on Sirius XM’s investment. In addition, as Professor Stowell also discusses, a ratcheting up of the music royalty rate would, against the turbulent financial history of the Company, as well as the volatility of the current economic environment, risk another period of financial distress for Sirius XM, which (along with its predecessors) has already narrowly averted bankruptcy twice in its existence. Such an undue consequence of rate-setting is precisely the form of risk Section 801(b)’s disruption factor is designed to avert. Finally, as Mr. Blatter, the Company’s head of music programming, testifies, there is more than ample evidence of the promotional benefits afforded to record labels and artists from the far broader array of songs – especially in niche genres and of lesser known artists – given airplay by Sirius XM than occurs on terrestrial radio. This testimony is directly relevant to both the “relative contributions” and “availability” prongs of § 801(b).

The analytic path to the setting of an appropriate fee here is far more straightforward than was the case in the *Satellite I* proceeding. Driven in significant part by the need to manage its costs aggressively, Sirius XM has reached out to record companies directly to negotiate (among

other rights) the very rights at issue in this proceeding. To date, Sirius XM has successfully negotiated more than 60 such licenses with record companies whose fees otherwise would be determined by the outcome of this proceeding. These licenses convey rights to the works of more than 7,000 artists and more than 9,000 albums – more than 110,000 sound recordings in total. As elucidated in the testimony of Professor Roger Noll, these licenses present the best possible evidence of how a competitive market values the rights covered by the statutory license – involving as they do transactions including the very same rights between the very same buyer and sellers as are involved in this proceeding. Accordingly, these licenses require none of the adjustments needed to account for the distinguishing characteristics (including interactivity, different buyers and sellers, and different rights) of other, less directly pertinent, benchmarks, such as those examined in the *Satellite I* proceeding. No comparable evidence to the direct license evidence was available to the Judges during the last proceeding. There can be no better example of voluntary license agreements of the type statutorily recognized to be of probative value than these direct licenses.¹

The evidence will make clear that the market rate for sound recording performance rights reflected in the more than 60 direct licenses so far entered into is actually *below* the current statutory rate. Record labels have agreed to royalty payments at rates between 5 and 7% of Sirius XM's gross revenue. Notably, these rates convey broader – hence arguably more valuable – rights than those governed by the statutory license, suggesting that this rate range, if anything, overstates the value solely of the statutory rates to be set by the Judges.

¹ 17 U.S.C. 114(f)(1)(B) prescribes that “[i]n establishing rates and terms for . . . preexisting satellite digital audio radio services, in addition to the objectives set forth in section 801 (b)(1), the Copyright Royalty Judges may consider the rates and terms for comparable types of subscription digital audio transmission services and comparable circumstances under voluntary license agreements.”

This compelling direct-license evidence is corroborated by marketplace agreements signed by noninteractive music services that offer programming comparable to that of Sirius XM's music channels and that now, with the advent of mobile streaming to smartphones, are available in the vehicle in direct competition with Sirius XM. As Mr. Rosenblatt and Professor Noll explain, these services are much closer (and thus the rates they pay require less adjustment) than the rates of the interactive services the Judges analyzed and to some degree relied on in the past. Properly adjusted, this benchmark suggests reasonable SDARS rates falling in the same 5-7% range as the direct licenses.

Professor Noll's analysis of both the direct license evidence and the noninteractive service benchmark demonstrates that, even were the governing inquiry in this proceeding confined to a determination as to the fees that willing buyers and willing sellers would agree to in a competitive marketplace for the rights at issue, a reasonable fee for Sirius XM lies in a rate range between 5 and 7% of Sirius XM's revenue. Insofar as the governing inquiry here implicates a "reasonable" rate informed not only by marketplace evidence, but also by application of § 801(b)'s policy factors, for the reasons mentioned above and further testified to by the remainder of Sirius XM's fact and expert witnesses, the rates implied by the foregoing marketplace evidence are, if anything, conservative measures of the proper fee outcome in this proceeding.

The following section summarizes the testimony that is offered in support of Sirius XM's Rate Request.

Fact Witnesses

In support of its royalty rate request, Sirius XM will present in its Direct Case the testimony of the following fact witnesses:

Mel Karmazin

Mel Karmazin is Chief Executive Officer of Sirius XM and has held that position (previously with Sirius) since 2004. Mr. Karmazin's testimony describes the ways in which Sirius XM's cost constraints – including having invented and continually invested in maintaining, upgrading and innovating its technological infrastructure and developing its unique and often exclusive content – vary widely from those of its new Internet-based competitors, which are not saddled with similar costs. Mr. Karmazin's testimony also describes Sirius XM's efforts, in an effort to control the Company's music-related costs, to obtain licenses for sound recording performance rights directly from record companies, and how such direct licenses should bear on the royalty rate set in this proceeding. Mr. Karmazin also explains that, although music content continues to be an area of focus for Sirius XM and has numerous advantages to the record companies themselves, the Company's unparalleled non-music (news, talk, entertainment and sports) programming – especially its exclusive content – remains the central aspect that sets it apart from its closest competitors.

Mr. Karmazin's testimony also describes Sirius XM's near-bankruptcy even following its aggressive post-merger cost-cutting measures, as well as numerous challenges facing the Company – including risks arising from its satellites and technology, the fragile economy, the Company's increasingly close ties to the volatile OEM market, and increasing competition. Although he is encouraged by the Company's recent profitability and remains optimistic about the Company's prospects in the near-term future, Mr. Karmazin explains that Sirius XM's future is far from clear and it is a long way from recouping the decades of losses it has incurred since its inception. For this reason, Mr. Karmazin believes that Sirius XM's royalty rate should not be increased from its current levels; to do so would be to take unfair advantage of Sirius XM's new-

found profitability (and would fail to take into account any of the serious risks and challenges facing the Company) and would provide an unwarranted windfall to SoundExchange and the record companies it represents. Mr. Karmazin concludes that, based on the far better information available today regarding marketplace benchmarks than existed when Sirius XM's current royalty rate was determined, the rate set during this proceeding should not exceed 5 to 7%.

James E. Meyer

James E. Meyer is President, Operations and Sales, of Sirius XM, and has held that position (previously with Sirius) since 2004. Mr. Meyer's testimony provides an overview of Sirius XM's business, the competitive landscape in which the Company operates, its distribution channels and the importance of the OEM market, and its continuing investments and innovations in its technological infrastructure. Mr. Meyer testifies how Sirius XM has become increasingly dependent on the fragile and volatile OEM market, and how this dependence, combined with the weak economy and numerous other challenges, makes Sirius XM's projected financial health during the 2013-2017 licensing period far from certain. One such serious risk factor, Mr. Meyer explains, is the increasingly robust technology in the market today, which has fostered the development of strong competition from new Internet-based audio content providers. Mr. Meyer describes the way in which these competitors, whose services are free or cheaper than Sirius XM's subscription rate and whose cost structure diverge widely from the Company's, have developed since the *Satellite I* proceeding and will be Sirius XM's primary challenge – including in the vehicle, the Company's primary distribution channel – during the 2013-2017 licensing period. Sirius XM strives to compete with these new Internet-based entrants by continually maintaining, upgrading and innovating its technological infrastructure, including its satellite and terrestrial repeater networks, chipsets and receiver products, broadcast facilities and data services

offerings, which will continue to be a major focus for investment and costs during the 2013-2017 period.

David J. Frear

David J. Frear is Executive Vice President and Chief Financial Officer of Sirius XM, and has held that position (previously with Sirius) since 2003. Mr. Frear's testimony describes various developments that have occurred since the *Satellite I* proceeding, including the merger of Sirius and XM and the combined Company's near-bankruptcy only a few months after the merger was consummated, which Sirius XM narrowly averted only by last-minute loans from Liberty Media Corporation. Mr. Frear also explains that, although after nearly two decades of losses the Company's financial performance has improved, it will take time to recoup its cumulative losses, particularly in light of the various challenges and uncertainties that Sirius XM faces in today's economy. To that end, Mr. Frear's testimony describes the various and substantial costs that Sirius XM faces in maintaining its business that are unique to the Company and not borne by any of its close competitors, such as satellite and transmission costs, engineering design and development costs, revenue share and royalty costs, among others. Mr. Frear testifies that while he is optimistic about Sirius XM's near-term prospects, it is difficult to forecast the Company's long-term results, as illustrated by the various overly-optimistic projections that were made, including by the Company, during the *Satellite I* proceeding.

Mr. Frear's testimony also explains how, in an effort to contain its royalty-related costs, Sirius XM in 2009 began its initiative to obtain licenses directly from music labels; this effort has been successful, notwithstanding overt interference from SoundExchange and other record industry trade groups, with more than 60 direct licenses signed to date that roll all of the rights Sirius XM needs for its services into a single license. Mr. Frear explains that, given the various

challenges and uncertainties facing the Company, any increase in the royalty rate would be economically unfounded and would pose the risk of disruptive hardship to the Company, and that the first-ever evidence of a competitive royalty rate from the Company's direct licenses counsels against any increase in the royalty rate in this proceeding.

Steven Blatter

Steven Blatter is Senior Vice President and General Manager of Music Programming at Sirius XM. Mr. Blatter, who testified on behalf of Sirius in the *Satellite I* proceeding, describes any material changes to Sirius XM that differ from his 2006 testimony and also discusses the range and coverage of the Sirius XM music channels, how each music channel is developed and programmed and Sirius XM's creative contribution to that process, the differences between satellite radio and terrestrial radio, and the promotional benefits of satellite radio. Mr. Blatter also describes how the direct impact of airplay on Sirius XM on the sale of recorded music is substantially greater than it was when he testified in the last proceeding, and how the promotional benefits of Sirius XM are valued by recording artists, artist managers, and recording companies.

Ronald H. Gertz

Ronald H. Gertz, Chairman of Music Reports, Inc. ("MRI"), and a 35-year veteran of the music licensing and rights administration business, offers testimony regarding Sirius XM's ongoing effort to secure direct licenses from record companies at competitive rates in lieu of the statutory license administered by SoundExchange. Mr. Gertz describes MRI's experience in licensing rights directly from rightsholders and administering direct licenses on behalf of digital music services; the reasons for the Sirius XM direct license initiative; the development by Sirius XM and MRI of the direct license offer and its key terms; the reaction to the license offer in the

market; the success of the offer, including the more than 60 labels that have to date accepted the offer and their key artists; and the coordinated interference of SoundExchange, the American Association of Independent Music and other industry groups and its detrimental effect on labels considering the offer.

Expert Witnesses

In addition, Sirius XM will present the testimony of the following expert witnesses:

Roger G. Noll

Dr. Roger G. Noll, Emeritus Professor of Economics at Stanford University, presents testimony establishing the economic basis for the Sirius XM rate proposal. Professor Noll's primary benchmarks are the 60-plus direct licenses signed by Sirius XM with various record companies to date – competitive market transactions for the precise rights at issue in this proceeding. Those licenses establish a competitive market rate of 5 to 7% of revenue, cover the same Sirius XM SDARS service (plus more), and need no adjustments for interactivity or otherwise. The direct-license benchmark is corroborated by voluntary marketplace agreements between Warner Music and certain popular noninteractive streaming music services, including Last.fm, which are available to users on mobile smartphones, and thus compete directly with Sirius XM in the vehicle. When properly adjusted to account for differences in the services, the negotiated rates between Warner and Last.fm suggest a rate for Sirius XM that falls squarely in the range established by the direct licenses.

William R. Rosenblatt

William R. Rosenblatt, President of GiantSteps Media Technology Strategies, is a technology industry veteran and expert in the market for digital music services, the development of those services including over mobile phones, their product/service features and competitive

advantages, and the technology behind their delivery. Mr. Rosenblatt's report identifies four important trends in the digital audio entertainment marketplace that were largely unforeseen at the time of the *Satellite I* proceeding and that will dramatically increase the range and scope of competitors to Sirius XM (especially in the vehicle) during the license term: (1) the introduction and massive uptake of smartphones capable of running mobile music applications ("apps"); (2) the development of high-speed mobile broadband networks capable of transmitting high-quality audio and video content to smartphones, including in the vehicle, in nearly every area of the U.S.; (3) the increased ability to connect those smartphones to the audio systems of vehicles, including in ways that integrate mobile music services directly into the dashboard and allow drivers to operate the apps directly through the displays and controls of vehicle audio systems; and (4) a wide variety of free streaming music services offering content comparable to (if not better than) Sirius XM music channels, as well as an increasing number of online outlets for non-music content, all of which can be accessed via mobile apps in the vehicle in direct competition with Sirius XM.

Mr. Rosenblatt's testimony is offered in conjunction with, and supports, the testimony of Professor David P. Stowell, who analyzes the potential disruptive impact of this competitive environment (among other factors) on Sirius XM's business and financial prospects during the upcoming license term. It also supports and illuminates the testimony of Professor Roger Noll, who identifies certain noninteractive digital music services available in the vehicle through mobile smartphones as presenting the closest analogues to Sirius XM music channels for benchmarking purposes in this proceeding.

David P. Stowell

David P. Stowell, professor of finance at Northwestern University's Kellogg School of Management, presents testimony evaluating the business and financial prospects of Sirius XM over the 2013-2017 license period and opines on the likely impact of any increase in the current royalty rate. Professor Stowell opines that, based on various considerations including the Company's tumultuous history and recent brush with bankruptcy, the ongoing uncertain economic climate, increased dependence on the volatile automobile industry, and an increasingly robust competitive landscape (which is likely to continue to gain momentum throughout the next licensing period, including in the all-important OEM distribution channel), Sirius XM faces a threat of disruption that is equal to or even greater than that which it faced during the *Satellite I* proceeding. Professor Stowell's testimony explains that the royalty that Sirius XM is required to pay SoundExchange has a large impact on its bottom line finances, and any increase to the royalty rate would substantially increase the likelihood of such a disruptive impact on the Company.

John R. Hauser, SC.D

Dr. John R. Hauser is the Kirin Professor of Marketing at the MIT Sloan School of Management at the Massachusetts Institute of Technology. Under the direction of Dr. Hauser, an Internet survey was conducted in September 2011 to measure the value consumers place on the various features of satellite radio, including music, non-music entertainment, talk, comedy shows, news, and commercial-free programming. The survey was carefully designed and executed, adhering to scientific principles of survey research to ensure reliability and validity of the results. A representative sample of 348 satellite radio subscribers was obtained and their responses were analyzed. The survey results demonstrate that respondents place a value of \$3.24

for music currently played on the XM and Sirius services. Moreover, Dr. Hauser found that 34.9% of the \$3.24 in willingness to pay for all types of music is attributed to music released before 1970. Accordingly, with respect to music limited to music from 1970 through today, Dr. Hauser concluded that respondents' willingness to pay is reduced to \$2.11. In the prior proceeding before the Copyright Royalty Board to set rates for the 2007-2012 period, Dr. Hauser conducted a similar survey during the rebuttal phase of the case. The 2007 survey results demonstrated the value of music was \$3.37 (for subscribers, unweighted). In the latest survey, the value of music is \$3.24. Dr. Hauser testifies that the difference between these two values is not statistically significant. Professor Noll uses Dr. Hauser's results as one measure of the value of music on Sirius XM – a value that he uses to adjust benchmark license rates from digital music services for application to Sirius XM.

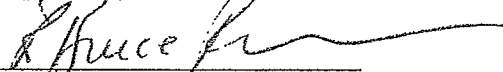
Designated Testimony from *Satellite I* (Docket No. 2006-1)

Sirius XM has also designated a variety of testimony from the *Satellite I* proceeding. Much of this designated testimony describes the early efforts of Sirius and XM in developing and building the satellite radio industry, the investments made by each company to do so, and their programming offerings at the time of the *Satellite I* proceeding. Rather than having the current Company witnesses restate that testimony, they cross-reference the designated testimony in their current submissions, explain its relevance, and provide updates as appropriate.²

² Certain of the designated *Satellite I* written testimony references separate exhibits from that proceeding. Consistent with 37 C.F.R. 351.4(b)(2), and in the interests of not burdening the Judges with irrelevant or unnecessary material, Sirius XM has designated the written testimony and hearing testimony (direct, cross, and redirect examination) from *Satellite I*, but has not designated the separate exhibits, which were determined to be unnecessary to the purposes for which the written testimony has been designated. (In addition, in some instances the exhibits referenced in the written testimony were not offered or admitted at trial.) Sirius XM will promptly make copies of any referenced exhibits available should the Judges so request.

November 29, 2011

Respectfully submitted,



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Witness	Title
Steven Blatter	Senior Vice President for Music Programming, Sirius XM Radio Inc.
David J. Frear	Executive Vice President and Chief Financial Officer, Sirius XM Radio Inc.
Ronald H. Gertz	Chairman, Music Reports, Inc.
John R. Hauser	Kirin Professor of Marketing, Massachusetts Institute of Technology Sloan School of Management
Mel Karmazin	Chief Executive Officer, Sirius XM Radio Inc.
James E. Meyer	President, Operations and Sales, Sirius XM Radio Inc.
Roger G. Noll	Professor of Economics <i>Emeritus</i> , Stanford University
William R. Rosenblatt	President, GiantSteps Media Technology Strategies
David P. Stowell	Professor of Finance, Kellogg School of Management

Designated Witnesses from <i>Satellite I</i> (Docket 2006-1)	
Steven Blatter	Senior Vice President for Music Programming, Sirius Satellite Radio Inc.
Steve Cohen	Vice President, Sports, Sirius Satellite Radio Inc.
Jeremy M. Coleman	Vice President, Talk, Entertainment, and Information Programming, Sirius Satellite Radio Inc.
Stephen R. Cook	Executive Vice President, Automotive, XM Satellite Radio Inc.
David J. Frear	Executive Vice President and Chief Financial Officer, Sirius Satellite Radio Inc.
Mel Karmazin	Chief Executive Officer, Sirius Satellite Radio Inc.
Robert Law	Senior Vice President and General Manager of Consumer Electronics, Sirius Satellite Radio Inc.
Eric Logan	Executive Vice President of Programming, XM Satellite Radio Inc.
Anthony J. Masiello	Senior Vice President of Operations, XM Satellite Radio Inc.
Gary M. Parsons	Chairman, XM Satellite Radio Inc.
Terrence Smith	Senior Vice President, Engineering, Sirius Satellite Radio Inc.
John Douglas Wilsterman	Senior Vice President and General Manager of the Original Equipment Manufacturing Division, Sirius Satellite Radio Inc.

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.**

DETERMINATION OF RATES AND TERMS FOR PREEXISTING SUBSCRIPTION AND SATELLITE DIGITAL AUDIO RADIO SERVICES

Docket No..2011-1
CRB PSS/Satellite II

Exhibit No.	Sponsoring Witness	Description
SXM Dir. Ex. 001	Mel Karmazin	Sirius XM Channel Lineups
SXM Dir. Ex. 002	Mel Karmazin	Sirius XM Form 10-K for period ending December 31, 2010
SXM Dir. Ex. 003	James Meyer	<i>New York Times</i> article “Trying Out the World’s First In-Car Music-Streaming System”
SXM Dir. Ex. 004	James Meyer	Ford Focus Commercial (video)
SXM Dir. Ex. 005	James Meyer	Toyota Entune Commercial (video)
SXM Dir. Ex. 006	David Frear	SoundExchange Statement, dated 10/27/2011
SXM Dir. Ex. 007	David Frear	Sirius XM form Direct License Agreement
SXM Dir. Ex. 008	David Frear	10/27/11 Email from Signature Sound to MRI
SXM Dir. Ex. 009	David Frear	A2IM Statement, dated August 9, 2011
SXM Dir. Ex. 010	David Frear	SoundExchange Statement, dated 8/11/2011
SXM Dir. Ex. 011	David Frear	NARAS Statement, dated 10/27/2011
SXM Dir. Ex. 012	David Frear	AFTRA Statement, dated 10/27/2011
SXM Dir. Ex. 013	David Frear	FMC Statement

Exhibit No.	Sponsoring Witness	Description
SXM Dir. Ex. 007	Ronald Gertz	Sirius XM form Direct License Agreement
SXM Dir. Ex. 014	Ronald Gertz	List of Sirius XM Direct Licenses
SXM Dir. Ex. 008	Ronald Gertz	10/27/11 Email from Signature Sound to MRI
SXM Dir. Ex. 015	William Rosenblatt	2012 Toyota Entune Audio System Demo (video)
SXM Dir. Ex. 016	William Rosenblatt	MOG/BMW Product Demo (video)
SXM Dir. Ex. 001	Steven Blatter	Sirius XM Channel Lineups
SXM Dir. Ex. 017	Steven Blatter	Brian Stelter, <i>Clear Channel Cuts DJs Across the Country</i> , N.Y. Times, Oct. 27, 2011
SXM Dir. Ex. 018	Steven Blatter	List of Sirius XM Celebrity Hosts
SXM Dir. Ex. 019	Steven Blatter	Ozzy Osbourne Press Release
SXM Dir. Ex. 020	Steven Blatter	List of Sirius XM's Specialty Programming
SXM Dir. Ex. 021	Steven Blatter	Steve Knopper, <i>Where Did the Rock Hits Go?</i> , Rolling Stone, March 2010
SXM Dir. Ex. 022	Steven Blatter	Steve Knopper, <i>Rock Radio Takes Another Hit</i> , Rolling Stone, November 2011
SXM Dir. Ex. 023	Steven Blatter	Christine Pawlak, <i>We Won't Rock You</i> , Slate, November 15, 2011
SXM Dir. Ex. 024	Steven Blatter	Channel Guides with Channels Not Available on Terrestrial Radio Highlighted
SXM Dir. Ex. 025	Steven Blatter	Arbitron Inc./Edison Research/Scarborough Research, <i>The Road Ahead, Media and Entertainment In The Car</i> (2011) .
SXM Dir. Ex. 026	Steven Blatter	Foster the People Press Release
SXM Dir. Ex. 027	Steven Blatter	Current and Recurrent vs. Gold Ratios Data
SXM Dir. Ex. 028	Steven Blatter	Elton John Interview (Audio File)
SXM Dir. Ex. 029	Steven Blatter	Kirk Hammett of Metallica Interview (Audio File)
SXM Dir. Ex. 030	Steven Blatter	David Draiman of Disturbed Interview (Audio File)
SXM Dir. Ex. 031	Steven Blatter	Elaine Bradley of Neon Trees Interview (Audio File)
SXM Dir. Ex. 032	Steven Blatter	Justin Tranter of Semi Precious Weapons (Audio File)
SXM Dir. Ex. 033	Steven Blatter	Green River Ordinance Thank You Message (Movie File)

Exhibit No.	Sponsoring Witness	Description
SXM Dir. Ex. 034	Steven Blatter	Adam Stewart, <i>House Legend Robbie Rivera On The State of Music, Deadmau5 And 'Jersey Shore'</i> (Apr. 7, 2010), available at, http://newsroom.mtv.com/2010/04/07/robbie-rivera-deadmau5-jersey-shore/
SXM Dir. Ex. 035	Steven Blatter	List of Artists Involved in Special Programming
SXM Dir. Ex. 036	Steven Blatter	Examples of Record Industry Ads that Mention Sirius XM
SXM Dir. Ex. 037	Steven Blatter	James N. Dertouzos, <i>Radio Airplay and the Record Industry: An Economic Analysis</i> .
SXM Dir. Ex. 038	Steven Blatter	Edison Research, <i>The National Record Buyers Survey</i> (2001).
SXM Dir. Ex. 039	Steven Blatter	Sampling of SXM Marketing Offers
SXM Dir. Ex. 040	Steven Blatter	Sampling of Waivers
SXM Dir. Ex. 041	Steven Blatter	Sampling of Artist Releases
SXM Dir. Ex. 042	Steven Blatter	May 2, 2011 email re: Bob Schneider
SXM Dir. Ex. 043	Steven Blatter	May 20, 2011 email re: Emphatic
SXM Dir. Ex. 044	Steven Blatter	June 8, 2011 email re: Jacob Lyda
SXM Dir. Ex. 045	Steven Blatter	August 3, 2011 email re: Red Line Chemistry
SXM Dir. Ex. 046	Steven Blatter	Daniel Glass Quote in May 2011 issue of <i>Hits</i>
SXM Dir. Ex. 047	Steven Blatter	May 12, 2011 email re: Grouplove June 13, 2011 email re: Grouplove
SXM Dir. Ex. 048	Steven Blatter	Mediabase Data for "Colours"
SXM Dir. Ex. 049	Steven Blatter	SoundScan Data for "Colours"
SXM Dir. Ex. 050	Steven Blatter	September 2011 emails re: Atlas Genius
SXM Dir. Ex. 051	Steven Blatter	Mediabase Data for "Trojans"
SXM Dir. Ex. 052	Steven Blatter	SoundScan Data for "Trojans"
SXM Dir. Ex. 053	Steven Blatter	Mediabase Data for "Dancing Shoes"
SXM Dir. Ex. 054	Steven Blatter	SoundScan Data for "Dancing Shoes"
SXM Dir. Ex. 055	Steven Blatter	Mediabase Data for "Shuffle"
SXM Dir. Ex. 056	Steven Blatter	SoundScan Data for "Shuffle"

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of

DETERMINATION OF RATES AND TERMS
FOR PREEXISTING SUBSCRIPTION AND
SATELLITE DIGITAL AUDIO RADIO
SERVICES

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) Docket No. 2011-1
) CRB PSS/Satellite II
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DECLARATION AND CERTIFICATION OF TODD D. LARSON

(On behalf of Sirius XM Radio Inc.)

1. I am counsel for Sirius XM Radio Inc. ("Sirius XM" or the "Company") in Docket No. 2011-1. I respectfully submit this declaration and certification pursuant to Rule 350.4(e)(1) per the terms of the Protective Order issued November 16, 2011 ("Protective Order"). I am authorized by Sirius XM to submit this Declaration on Sirius XM's behalf.

2. I have reviewed Sirius XM's Written Direct Statement, witness statements, designated testimony, exhibits, and Redaction Log submitted in this proceeding. I have also reviewed the definitions and terms provided in the Protective Order. After consultation with my client, I have determined to the best of my knowledge, information and belief that portions of Sirius XM's Written Direct Statement, witness statements, designated testimony, and accompanying exhibits contain information that is "Protected Material" as defined by the Order. The Protected Material is identified in the Redaction Log, shaded in the printed copies of Sirius XM's filing, and described in more detail below.

3. Such Protected Material includes, but is not limited to, testimony and exhibits involving (a) contracts, contractual terms, and contract strategy that are proprietary, not available

to the public, highly competitively sensitive and, at times, subject to express confidentiality provisions with third parties; and (b) highly confidential internal business information, financial projections, financial data, and competitive strategy that are proprietary, not available to the public, and commercially sensitive.

4. If this contractual, strategic, and financial information were to become public, it would place Sirius XM at a commercial and competitive disadvantage, unfairly advantage other parties to the detriment of Sirius XM, and jeopardize its business interests. Information related to confidential contracts or relationships with third-party content providers could be used by Sirius XM's terrestrial radio and Internet-based competitors, or by other content providers, to formulate rival bids, bid up Sirius XM payments, or otherwise unfairly jeopardize Sirius XM's commercial and competitive interests.

5. With respect to the financial information in the Restricted materials, I understand that Sirius XM has not disclosed to the public or the investment community the financial information that it seeks to restrict here (including spending and investment projections, specific royalty payment information, and the like). As a result, neither the Company's competitors nor the investing public has been privy to that information, which the Company has viewed as highly confidential and sensitive, and has guarded closely. In addition, when Sirius XM does disclose information about the Company's finances to the market as required by law, the Company provides accompanying analysis and commentary that contextualizes disclosures by its officers. The information that Sirius XM seeks to restrict under the Protective Order, while truthful and accurate to the best of each witness's knowledge, was not intended for public release or prepared with that audience in mind, and therefore was not accompanied the type of detailed explanation and context that usually accompanies such disclosures by a company officer. Moreover, the

statements and exhibits containing the information have not been approved by Sirius XM's Board of Directors, as such sensitive disclosures usually are, or accompanied by the typical disclaimers that usually accompany such disclosures. Sirius XM could experience negative market repercussions, competitive disadvantage, and even possible legal exposure were this confidential financial information released publicly without proper context or explanation.

6. The written direct statement of Mel Karmazin, Chief Executive Officer of Sirius XM, contains material non-public information concerning Sirius XM's anticipated investments over the 2013-2017 licensing period, as well as confidential financial information concerning Sirius XM's costs and royalty payments over the 2007-2012 licensing period and detailed non-public information regarding the number of customers who subscribe to certain Select or Premier Sirius XM packages. None of this information is publicly known or available. Disclosure of the financial details of these contractual arrangements and non-public financial data would, for reasons discussed in paragraphs 4 and 5 above among others, competitively disadvantage Sirius XM.

7. The written direct statement of James E. Meyer, President, Operations and Sales, contains material non-public internal financial data concerning certain of Sirius XM's costs and expenditures over the 2007-2012 licensing period, as well as certain anticipated costs in updating its technological infrastructure over the 2013-2017 licensing period. Mr. Meyer's testimony also contains material non-public internal financial data concerning payments made by Sirius XM to automobile manufacturers and aftermarket participants pursuant to the terms of the Company's confidential agreements with those entities. None of this information is publicly known or available. Disclosure of the financial details of these contractual arrangements and the non-

public financial data would, for reasons discussed in paragraphs 4 and 5 above among others, competitively disadvantage Sirius XM.

8. The written direct statement of David J. Frear, Executive Vice President and Chief Financial Officer, Sirius XM contains material non-public internal financial data concerning certain of Sirius XM's costs and expenditures over the 2007-2012 licensing period, as well as material non-public internal financial forecasts prepared during the 2005-2010 period. Mr. Frear's testimony also contains certain material non-public terms of agreements with content providers that are subject to confidentiality provisions as well as material non-public details of negotiations with potential lenders. None of this information is publicly known or available. Disclosure of the financial details of these agreements and the non-public financial data would, for reasons discussed in paragraphs 4 and 5 above among others, competitively disadvantage Sirius XM.

9. The written direct statement of Steven Blatter, Senior Vice President and General Manager of Music Programming, contains information regarding terms of contracts with artists and/or record labels regarding Sirius XM's artist-themed channels. None of this information is publicly known or available. For reasons discussed in paragraph 4 above, disclosure of the financial details of these contractual arrangements would competitively disadvantage Sirius XM. In addition, one of the exhibits sponsored by Mr. Blatter contains information relating to a non-public marketing proposal to artists. Disclosure of the identities of these individual artists could jeopardize the Company's relationships with these individuals and cause Sirius XM competitive harm. Finally, the testimony of and exhibits sponsored by Mr. Blatter contain certain non-public communications between Sirius XM personnel and representatives of third-party content providers to Sirius XM. Disclosure of the identities of these third-party content providers would

jeopardize the Company's relationships with these individuals, who communicated with Sirius XM with the understanding the communications were private and confidential, and thus cause Sirius XM competitive harm.

10. One exhibit to the written direct statement of Ronald H. Gertz, SXM Dir. Ex. 14, contains a list of Sirius XM direct licenses identifying the particular rate agreed to by each licensor. Although the range of rates offered by Sirius XM in its direct licenses is public, the specific rates within that range offered to, and agreed to, by particular parties is not public. For reasons discussed in paragraph 4 above, disclosure of these contractual arrangements would competitively disadvantage Sirius XM.

11. The written direct statement of David P. Stowell contains material non-public information concerning Sirius XM's royalty payments over the 2007-2012 licensing period. None of this information is publicly known or available. Disclosure of these financial details would, for reasons described in paragraphs 4 and 5 above, competitively disadvantage Sirius XM.

12. The written direct statement of Roger G. Noll and certain tables and appendices attached thereto contain material non-public information concerning the particular rates agreed to by specific Sirius XM direct licensors, and material non-public internal financial data concerning package subscriber counts, SoundExchange payments, sales and marketing costs, revenue sharing arrangements with automobile manufacturers pursuant to terms of confidential agreements, and depreciation and amortization costs. None of this information is publicly known or available. Disclosure of this information would, for reasons discussed in paragraphs 4 and 5 above among others, competitively disadvantage Sirius XM.

13. In addition to these written direct statements and exhibits, Sirius XM also has submitted designated testimony (including written direct and rebuttal testimony and hearing testimony) from Docket No. 2006-1 CRB DTRA from Mel Karmazin, David Frear, and Stephen R. Cook (among others). Portions of that testimony include detailed discussions of contractual arrangements and financial information that was protected by the Judges under a nearly identical protective order in the prior proceeding. Sirius XM is not seeking to keep all that Protected Material off the public record in this proceeding; rather, after a careful review of the designated testimony, the Company seeks to restrict only specific materials, which are detailed on the Redaction Log. Disclosure of the financial details of the specified contractual arrangements and non-public financial data would, for reasons discussed in paragraphs 4 and 5 above among others, competitively disadvantage Sirius XM, and Sirius XM requests protection of the material consistent with the Judges' prior rulings.

14. The contractual, commercial and financial information described in the paragraphs above and detailed on the accompanying Redaction Log must be treated as restricted "Protected Material" in order to prevent business and competitive harm that would result from the disclosure of such information while, at the same time, enabling Sirius XM to provide the Copyright Royalty Judges with the most complete record possible on which to base their determination in this proceeding.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury that, to the best of my knowledge, information and belief, the foregoing is true and correct.



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Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of)
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DETERMINATION OF RATES AND TERMS)
FOR PREEXISTING SUBSCRIPTION AND)
SATELLITE DIGITAL AUDIO RADIO)
SERVICES)
)

Docket No. 2011-1
CRB PSS/Satellite II

**REDACTION LOG FOR THE WRITTEN DIRECT STATEMENT OF
SIRIUS XM RADIO INC.**

Pursuant to the requirements of the Protective Order entered by Judges on November 16, 2011, Sirius XM Radio Inc. ("Sirius XM" or the "Company") hereby submits the following list of redactions from its Written Direct Statement filed November 29, 2011, and the undersigned certify, in compliance with 37 C.F.R. § 350.4 (e)(1), and based on the Declaration and Certification of Todd D. Larson submitted herewith, that the listed redacted materials meet the definition of "Restricted" contained in the Protective Order.

<u>Document</u>	<u>Page/Paragraph/Exhibit No.</u>	<u>General Description</u>
Introductory Memorandum to the Written Direct Statement of Sirius XM Radio Inc.	Pages 3-4	Contains material non-public internal financial data concerning total projected royalties paid to SoundExchange through the end of the 2007-2012 licensing period.
Written Direct Testimony of Mel Karmazin	Page 4, Paragraph 10	Contains material non-public internal financial data concerning anticipated investment in Sirius XM's business over the 2013-2017 licensing period.

<u>Document</u>	<u>Page/Paragraph/Exhibit No.</u>	<u>General Description</u>
	<p>Page 4, Paragraph 11</p> <p>Page 15, Paragraph 36</p> <p>Page 18, Paragraph 43</p>	<p>Contains material non-public internal financial data concerning investment in Sirius XM 2.0.</p> <p>Contains material non-public information concerning number of subscribers to Select and Premier packages.</p> <p>Contains material non-public internal financial data concerning total projected royalties paid to SoundExchange through the end of the 2007-2012 licensing period.</p>
Written Direct Testimony of James E. Meyer	<p>Page 2, Paragraph 5, footnote 1</p> <p>Page 20, Paragraph 42</p> <p>Page 20, Paragraph 43</p> <p>Page 21, Paragraph 44</p>	<p>Contains material non-public internal financial data concerning Sirius XM's costs for customer service-related technology in 2010.</p> <p>Contains material non-public internal financial data concerning net subscription revenues paid to automobile manufacturers pursuant to terms of confidential agreements.</p> <p>Contains material non-public internal financial data concerning average annual expenditure on incentives to automobile manufacturers pursuant to terms of confidential agreements.</p> <p>Contains material non-public internal financial data concerning annual expenditure on incentives to aftermarket participants pursuant to terms</p>

<u>Document</u>	<u>Page/Paragraph/Exhibit No.</u>	<u>General Description</u>
	Page 26, Paragraph 54	of confidential agreements. Contains material non-public internal financial data concerning anticipated cost of upgrade to Sirius repeater network during next licensing period.
	Page 28, Paragraph 60	Contains material non-public internal financial data concerning anticipated cost of upgrades and replacement of broadcast studio infrastructures during next licensing period.
Written Direct Testimony of David J. Frear	Page 5, Paragraph 11	Contains material non-public information concerning negotiations with lenders.
	Pages 8-9, Paragraph 20 and footnote 5	Contains material non-public information concerning the terms of contracts with content providers that are subject to confidentiality provisions.
	Page 11, Paragraph 27	Contains material non-public internal financial data concerning sales and marketing costs.
	Page 11, Paragraph 28	Contains material non-public internal financial data concerning revenue sharing arrangements with automobile manufacturers pursuant to terms of confidential agreements.
	Page 12, Paragraph 29	Contains material non-public internal financial data concerning depreciation and amortization costs.
	Pages 15-17, Charts following Paragraph 35	Contains material non-public

<u>Document</u>	<u>Page/Paragraph/Exhibit No.</u>	<u>General Description</u>
	<p>Page 21, Paragraph 43</p> <p>SXM Dir. Ex. 7</p>	<p>internal forecasts of subscriber growth, revenue growth, earnings growth, and cash flow growth.</p> <p>Contains material non-public internal financial data concerning actual and projected royalties paid to SoundExchange.</p> <p>Contains material non-public data regarding specific royalty rate agreed to by a Sirius XM direct licensor.</p>
Written Direct Testimony of Steven Blatter	<p>Page 22, Paragraph 55, Footnote 7</p> <p>Page 24, Paragraph 61, Lines 1 and 5</p> <p>Page 24, Paragraph 62, Lines 1 and 2</p> <p>Pages 24-25, Paragraph 63, Line 1</p>	<p>Contains non-public commercial information pertaining to terms of confidential agreements.</p> <p>Contains non-public, confidential communications between Sirius XM personnel and representatives of third-party content providers to Sirius XM.</p> <p>Contains non-public, confidential communications between Sirius XM personnel and representatives of third-party content providers to Sirius XM.</p> <p>Contains non-public, confidential communications between Sirius XM personnel and representatives of third-party content providers to Sirius XM.</p>

<u>Document</u>	<u>Page/Paragraph/Exhibit No.</u>	<u>General Description</u>
	Page 25, Paragraph 64	Contains non-public, confidential communications between Sirius XM personnel and representatives of third-party content providers to Sirius XM.
	Pages 25-26, Paragraph 67, Lines 2, 3, 4, 6, 11	Contains non-public, confidential communications between Sirius XM personnel and representatives of third-party content providers to Sirius XM.
	SXM Dir. Ex. 39	Contains non-public Sirius XM artist marketing proposal.
	SXM Dir. Exs. 42 – 45, 47	Contains non-public, confidential communications between Sirius XM personnel and representatives of third-party content providers to Sirius XM.
Written Direct Testimony of Ronald H. Gertz	SXM Dir. Exs. 7, 14	Contains material non-public data regarding specific royalty rates agreed to by each Sirius XM direct licensor.
Written Direct Testimony of David P. Stowell	Page 5, Paragraph 13	Contains material non-public internal financial data concerning actual royalties paid to SoundExchange.
	Page 6, Paragraph 14	Contains material non-public information concerning negotiations with lenders.
	Page 15, Exhibit 4 following Paragraph 31	Contains material non-public internal financial data concerning actual royalties paid to SoundExchange.
Written Direct Testimony of Roger G. Noll	Page 32, 41, 42	Contains material non-public data regarding specific royalty rates agreed to by Sirius XM

<u>Document</u>	<u>Page/Paragraph/Exhibit No.</u>	<u>General Description</u>
	Page 46	direct licensors. Contains material non-public internal financial data concerning actual royalties paid to SoundExchange.
	Table 1	Contains material non-public data regarding specific royalty rates agreed to by Sirius XM direct licensors.
	Table 3, Appendix D	Contains material non-public internal financial data concerning sales and marketing costs, revenue sharing arrangements with automobile manufacturers pursuant to terms of confidential agreements, and depreciation and amortization costs.
	Table 4, Appendix C	Contains material non-public internal data concerning Sirius XM package subscriber counts.
SIRIUS XM DESIGNATED TESTIMONY FROM SATELLITE I (DOCKET NO. 2006-1)		
Designated Written Rebuttal Testimony of Mel Karmazin	Page 3, Paragraph 5 Pages 6-7, Paragraph 14	Material designated as restricted by the Judges pursuant to protective order in Docket No. 2006-1 (discussion of non-public terms of confidential agreement between Sirius and the NFL).
	Page 4, Paragraph 11	Material designated as restricted by the Judges pursuant to protective order in Docket No. 2006-1 (discussion of terms of confidential agreement between Sirius and Howard Stern.)

<u>Document</u>	<u>Page/Paragraph/Exhibit No.</u>	<u>General Description</u>
	Page 7, Paragraph 16	Material designated as restricted by the Judges pursuant to protective order in Docket No. 2006-1 (discussion of terms of confidential agreement between Sirius and NASCAR).
Designated Direct Hearing Testimony of David Frear	June 12, 2007 trial transcript	Session was closed to the public by the Judges pursuant to protective order in Docket No. 2006-1; contains material non-public information concerning financial forecasts.
Designated Rebuttal Hearing Testimony of David Frear	August 15, 2007 transcript	Session was closed to the public by the Judges pursuant to protective order in Docket No. 2006-1; contains material non-public information concerning financial forecasts.
Designated Direct Hearing Testimony of Stephen R. Cook	June 6, 2007 trial transcript	Session was closed to the public by the Judges pursuant to protective order in Docket No. 2006-1; contains material non-public information concerning terms of confidential agreement between XM Satellite Radio, Inc. and Harpo Radio.

Dated: November 29, 2011

Respectfully submitted,

Todd D. Larson /JSK

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Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of:

Determination of Rates and Terms for
Preexisting Subscription Services and
Satellite Digital Audio Radio Services

Docket No. 2011-1
CRB PSS/Satellite II

CERTIFICATE OF SERVICE

I, Jaime S. Kaplan, hereby certify that a copy of the foregoing Written
Direct Statement of Sirius XM Radio Inc. has been served electronically by agreement of
the parties on this 2nd day of December, 2011, with hard copy to follow, on the following
parties:

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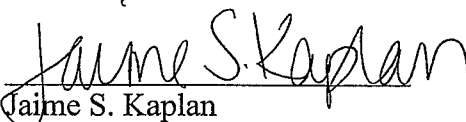
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